MULTIMEDIA UNIVERSITY

STUDENT ID NO

MULTIMEDIA UNIVERSITY FINAL EXAMINATION

TRIMESTER 1, 2020/2021

ULV4612 - LAW OF EVIDENCE I

(All Sections / Groups)

20 October 2020
Reading Time : 2.30pm -2.45pm (15 Minutes)
Answering Time : 2.45pm- 5.45pm (3 Hours)

INSTRUCTIONS TO STUDENT:

1. Students will have **fifteen minutes** during which they may read the paper and make rough notes ONLY in their question paper. Students then have the remaining **THREE HOURS** in which to answer the questions.

2. This Question paper consists of 4 pages and is divided in to 2 parts **(Part A and Part B)**. There are 2 questions in Part A and 3 questions in Part B.

3. Students are required to answer only **1 question in Part A (answer either Q1A or Q1B) and answer ALL 3 questions in Part B.** All questions carry equal marks and the distribution of the marks for each question is given.

4. Students are allowed to bring into the Examination Hall only a CLEAN and ORIGINAL copy of the:
   i. EVIDENCE ACT 1950
   ii. EVIDENCE OF CHILD WITNESS ACT 2007(Optional/ Annexed to this Question paper); and
   iii. CRIMINAL PROCEDURE CODE
   (Students are not allowed to lend or borrow statute(s) during the Examination. "Clean" is defined to include no tagging, no annotation either by the publisher or anyone else, and no erased marking. Highlighting and underlining are also prohibited.)

5. Please write all your answers in the Answer Booklet provided.

PART (A)

Answer only 1 question in Part A.
Answer either Question1(A) or Question 1(B).

QUESTION 1 (A)

"In our view, on the wording of s. 37(da) as it stands, to read the presumption of possession (ie, possession as understood in Criminal law, with knowledge) provided in s. 37(d) into s. 37(da) so as to invoke against an accused a further presumption of trafficking (ie, presumption upon presumption) would not only be ascribing to the phrase "found in possession" in s. 37(da) a meaning wider than it ordinarily bears but would also be against the established principles of construction of penal statutes and unduly harsh and oppressive against the accused. We are not unaware that, as general principle, a statute may place the burden of proof on an accused by necessary implication and without doing so expressly. This depends on the construction of the particular legislation. But a court should be extremely cautious and slow to infer from a statute that Parliament intended to impose on the defendant an onerous duty to prove his innocence in a criminal case. Furthermore, offences involving the trafficking of dangerous drugs are among the most serious in the criminal calendar. Any ambiguity in s. 37(da) should be resolved in favour of the accused by placing the burden of proving possession of the substances involved on the prosecution."

(Per Chong Siew Fai CJ (Sabah & Sarawak) in *Muhammed Hassan v Public Prosecutor* [1998] 2 CLJ 170)

Evaluate the above statement based on the current provisions of the Dangerous Drugs Act 1952 (Revised 1980) Act 234 and relevant case law.

(Total: 25 marks)

QUESTION 1(B)

"It is elementary principle of common law that hearsay evidence which is incapable of being tested by cross-examination to determine its veracity is not admissible to determine the guilt. And if it is so made admissible it may be for the limited purpose to corroborate some material evidence. Anything less will be abhorrent to notion of justice and fair play."

(Per Hamid Sultan Abu Backer JCA in *Kobra Taba Seidali v Public Prosecutor* [2014] 2 CLJ 12)

Evaluate the above statement based on the interpretation of section 32(1) paragraph (i) and (j) of the Evidence Act 1950.

(Total: 25 marks)

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PART (B)
Answer all 3 questions in Part (B)
QUESTION 2

The defendant, Flash Racing Sdn. Bhd. (Flash) is a company that manages a Malaysian motor racing team that races under the team name "*Flash Racing Team*". The plaintiff, Maxi Superbikes Sdn Bhd (Maxi) is a company that specialises in the import and sale of superbikes in Malaysia. In 2019, Maxi approached Flash expressing interest to enter a sponsorship deal to promote its brand name. Following negotiations between the 2 parties it was agreed that for a total consideration fee of RM 4 million Maxi will be appointed as Flash's official sponsor for the 2020 race season. The negotiation between Flash and Maxi was carried out in the form of email correspondence between Alonso (Managing Director of Flash) and Sebastian (Managing Director of Maxi). It was also agreed that the consideration fee of RM 4 million will be released in 2 payments, with the first payment to be made at the commencement of the 2020 race season and the second payment to be released at the end of the 2020 race season. The race season for 2020 commenced on 10 February, however the parties had still not executed the official sponsorship agreement. Nevertheless, both parties agreed that sponsorship deal will commence based on the terms agreed to by email between Alonso and Sebastian. On the 20 March 2020, Sebastian in an email to Alonso wrote: '*As part of our commitment to the sponsorship, we have transferred a payment to Flash amounting to RM 1 million. The proof of payment is also attached for your reference. We will release the remainder within next 3 months. Your attention on this matter is highly appreciated. We look forward to finalise the agreement soon.*' On the 26 March 2020, Alonso replied: '*We thank you for the release of the first payment amounting to RM1million and look forward to execution of the agreement and the release of further payments.*' On 18 March 2020 the Malaysian government imposed the Covid-19 Movement Control Order and the Motor Racing season for 2020 was suspended, until further notice. In June 2020 Maxi through their solicitors wrote to Flash demanding for the return of the RM 1million first payment on grounds that the sponsorship agreement has been frustrated by the MCO and the suspension of the racing season. Flash disputed Maxi's argument that the agreement is frustrated and refused to return the payment. Maxi has now commenced legal proceedings for the return of the RM1 million and Flash has counter claimed demanding the full settlement of RM 4 million as agreed. You have been retained to advise Flash. Evaluate the following evidential issues:

a. the admissibility of the email correspondence between Alonso and Sebastian negotiating the terms of the agreement. Both Alonso and Sebastian who are expatriates have since left Malaysia;

b. the admissibility of the email dated 20 March 2020 from Sebastian to Alonso. Maxi objects to the admissibility of this email on the ground that it is without prejudice.

(Total: 25 marks)

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QUESTION 3

The accused, Rob has been charged for the murder of his wife Sheila. Sheila's body was found on 13 August 2018 in a drain at the KM 88 Lebuhraya Persekutuan Ipoh/Kuala Lumpur by some workers doing maintenance repair on the highway. The prosecution's narrative is that Rob had killed Sheila over a quarrel arising from his financial problems. The prosecution's evidence against Rob is purely circumstantial. During trial the following evidence were tendered by the prosecution:

i. evidence from Mel (Sheila's sister) that Rob and Sheila had an argument over money on 12 August 2018 during a family gathering in Ipoh;

ii. the evidence from Mike, a pawnshop assistant in KL that on 14 August 2018 someone came to his pawnshop to pawn some jewellery. He identified Rob in the dock as the man who came to pawn the jewellery on 14 August 2018. The dock identification was the first time Mike had formally identified Rob as no identification parade was conducted by the police;

iii. evidence from Jan (Sheila's mother) who identified the pawned jewellery as items belonging to Sheila together with evidence that Sheila's driving licence and the pawn receipt were found in Rob's wallet at the time of his arrest.

Analyse the following issues:

a. the relevancy of the evidence tendered by the prosecution;

(15 marks)

b. the duty of the prosecution at the end of trial based on the nature of the evidence against Rob.

(10 marks)

(Total: 25 marks)

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QUESTION 4

On 3 November 2018 at about 10am, Lan (a police officer) received a phone call from a Mr OPY, a manager of a courier service company Fast Express, regarding one box, which he suspected to contain dangerous drugs, and to be delivered to No.10 Mentari Court Apartment, Petaling Jaya. On receiving the information, Lan instructed Inspector Man to carry out an operation as undercover police to deliver the box and to arrest the person. On the same day, at about 2pm, as part of the operation, Inspector Man and his team waited in front of Mentari Court and waited for the undercover officer to deliver the box to Majid. When Majid opened the door and took delivery of the box Inspector Man and his team approached and identified themselves as police officers. Majid dropped the box and tried to run away but was apprehended by the police. Majid was handcuffed and Inspector Man warned him to co-operate with the police. Inspector Man in the presence of Majid opened the delivery box. Inside the box, he found four transparent plastic packets containing crystalline substance concealed in bicycle seats which had already been ripped open. Upon further questioning Majid admitted that the drugs belonged to him. The crystalline substance found concealed in the bicycle seats was sent to the chemistry department for analysis by one of the members of Inspector Man's team. Ms. Kia, a chemist carried out the analysis of the substance and confirmed that it contained methamphetamine weighing 1498g. Majid was charged for trafficking 2,500g of methamphetamine under s. 39B(1)(a) of the Dangerous Drugs Act 1952. During trial the following evidence was tendered by the prosecution:

i. testimony from Inspector Man that methamphetamine weighing 2,500g was seized during the police operation and that Majid had confessed the drugs belonged to him;

ii. testimony from Ms. Kia on the analysis and weightage of the drugs. In her testimony, Ms. Kia stated that she does not remember the name of the police officer who submitted the evidence for analysis with the chemistry department and confirmed that the substance analysed was methamphetamine weighing 1498g.

The defence counsel raised no objection to the admissibility of both these evidence which were admitted by the trial judge. During trial the prosecution did not call Mr. OPY as a witness. At the end of trial, the judge ruled that the prosecution had proven the case against Majid beyond reasonable doubt and convicted him. Majid wishes to appeal against his conviction.

Analyse Majid's potential grounds of appeal.

(Total: 25 marks)

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